

NINETEENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: 509297

DIVISION:

D

J. ROBERT WOOLEY, COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA IN HIS CAPACITY AS LIQUIDATOR OF
AmCARE HEALTH PLANS OF LOUISIANA

VERSUS

FOUNDATION HEALTH CORPORATION, FOUNDATION HEALTH SYSTEMS, INC.,
AND HEALTH NET, INC.

FILED: _____

DEPUTY CLERK

STATE
FILED

**PETITION TO ENFORCE GUARANTEE, FOR DAMAGES AND FOR
EQUITABLE RELIEF**

NOW INTO COURT, through undersigned counsel, comes J. Robert Wooley, Commissioner of Insurance for the State of Louisiana, in his capacity as Liquidator of AmCare Health Plans of Louisiana (the "Commissioner") through his duly appointed Receiver, Marlon V. Harrison (the "Receiver"), who respectfully represents, as follows:

PARTIES

1.

Made defendants herein are:

- A. Foundation Health Corporation ("Foundation"), a foreign corporation formerly doing business in Louisiana, and its successors.
- B. Foundation Health Systems, Inc. ("Foundation Health"), a foreign corporation formerly doing business in Louisiana, and its successors.
- C. Health Net, Inc., ("Health Net"), a foreign corporation, formerly doing business in Louisiana, and its predecessors and successors, which owns forty six (46%) per cent of AmCareCo, Inc. (owner of one hundred (100%) per cent of the shares of AmCare Health Plans of Louisiana.
- D. ABC 1-100, presently unknown companies, which, upon information and belief, is or are successors, predecessors, affiliates, subsidiaries, parents, or other companies or business entities of Foundation Health Corporation, Foundation Health Systems, Inc., and/or Health Net, Inc.
- E. Fictitious Individual/Entity Defendants: any person, juridical entity or third party,

whether that third party is a person or entity or otherwise, interposed to act either independently, act for or act in concert with any defendant named or to be named are identified as Does 1-100.

JURISDICTION AND VENUE

2.

Jurisdiction and venue is proper and exclusive in this Court pursuant to LSA-R.S. 22: 732, *et seq.*, including, but not limited to, sections 732.3, 735, and 737, La. R. S. 22:76, and La. R.S. 22:1004.

3.

Jurisdiction and venue is proper and exclusive in this Court pursuant to the order of this Court, Division D, of November 12, 2002, which order specifically states:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court has exclusive jurisdiction over all matters relating to AmCare and the rehabilitation and liquidation of AmCare.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court for 19th Judicial District Court for the Parish of East Baton Rouge be directed to file any proceeding related in any way to or arising out of AmCare in this proceeding, case number 499-737, to be numbered in consecutive order as follows: 499-737-01, 499-737-02, 499-737-03, *et seq.*, and assigned to Division D of this Court, and further than any suits pending or filed against AmCare, the Rehabilitator, the Liquidator, and/or the Receiver or in any way related to or arising out of AmCare be transferred to Division D of this Court.

4.

The defendants, their predecessors and/or successors, filed statements with the Commissioner in accordance with La. R.S. 22:76 and La. R.S. 22:1004, and operated or caused to be operated a Louisiana health maintenance organization in the State of Louisiana, and therefore vested jurisdiction over this matter with the Courts of this State and the defendants are deemed to have appointed the Commissioner as true and lawful attorney upon whom may be served all lawful process in this action and service of the Commissioner shall be valid and binding as if due service had been made on the defendants.

5.

Defendants are indebted to plaintiff for such damages as are reasonable in the premises, together with legal interest from the date of judicial demand until paid in full, attorneys fees, and for all costs of these proceedings, and for all other equitable relief, for the following reasons:

6.

Plaintiff is entitled to specific performance of the Guarantee executed by Foundation Health

Corporation on December 9, 1996, as is more fully explained herein.

GENERAL ALLEGATIONS

7.

By order of the Nineteenth Judicial District Court in case number 499-737, Division "D", on September 23, 2002, this Court entered an order of rehabilitation and the Commissioner of Insurance and the Receiver were appointed by this Court to rehabilitate AmCare Health Plans of Louisiana, Inc. ("AmCare-LA").

8.

By order of this Court in the same matter on November 12, 2002, this Court entered a permanent order of liquidation and the Commissioner and the Receiver were appointed by this Court to liquidate AmCare-LA.

9.

Pursuant to those orders, the Commissioner and the Receiver were granted exclusive authority to liquidate AmCare-LA.

10.

Pursuant to those orders, the Nineteenth Judicial District Court for the Parish of East Baton Rouge, in case number 499-737, Division D, was granted exclusive jurisdiction to handle all matters related to the liquidation of AmCare-LA.

11.

Pursuant to those orders, the Commissioner and the Receiver have been actively implementing the liquidation of AmCare-LA pursuant to the insurance laws of the State of Louisiana.

AmCARE-LA's RELATIONSHIP TO DEFENDANTS

12.

It has come to the attention of the Commissioner and the Receiver that on or about December 9, 1996, Foundation Health Corporation executed a guarantee (the "Guarantee"), which guarantee provided that "Foundation Health Corporation, the sole shareholder of Foundation Health, A Louisiana Health Plan, Inc. ("FHLHP"), guarantees that it shall provide sufficient capital to FHLHP to ensure that FHLHP maintains the minimum amounts of paid capital and surplus required for an HMO under Louisiana law. This guarantee is to remain in place until Foundation

Health Corporation provides written notice of its cancellation to the Commissioner of Insurance, State of Louisiana, at least sixty (60) days in advance of the effective date of cancellation.” (A copy of the Guarantee is attached hereto as **Exhibit “A”**).

13.

By letter dated July 24, 1997, from Foundation Health Systems, Inc. to S. Denise Brignac, CFF of the Louisiana Department of Insurance, Foundation Health Systems, Inc. represented that the Guarantee had been executed by Foundation Health Corporation on December 9, 1996 by Foundation Health Corporation’s Chief Financial Officer, but that no specific assets have been pledged with respect to the Guarantee, but that Foundation Health Systems, Inc. is a large company with assets of “\$4.1 billion, including \$1.8 billion in cash and investments”. (A copy of that letter is attached hereto as **Exhibit “B”**).

14.

No written notice of cancellation of the Guarantee has been provided to the Commissioner.

15.

On or about April 30, 1999, the Commissioner approved the acquisition of Foundation Health, A Louisiana Health Plan by AmCareCo, with the condition that the capital of Foundation Health, A Louisiana Health Plan “shall at all times remain at a minimum of \$4,000,000.00 (Four million dollars)”.

16.

In connection with that acquisition, Health Net, Inc. acquired forty-six and 9/10 (46.9%) per cent of AmCareCo, Inc.

17.

Foundation Health, A Louisiana Health Plan, Inc. subsequently changed its name to AmCare Health Plans of Louisiana.

18.

Upon information and belief, Foundation Health Corporation then merged with Foundation Health Systems, Inc.

19.

Upon information and belief, Foundation Health Systems, Inc. changed its name to Health Net, Inc.

20.

Upon information and belief, prior to May 3, 1999, Foundation Health Corporation and/or its successors made contributions to Foundation Health, A Louisiana Health Plan, Inc. in order for Foundation Health, A Louisiana Health Plan, Inc. to reach minimum capital and surplus requirements of Three Million (\$3,000,000.00) Dollars.

21.

On or about April 30, 1999, AmCareCo approved a distribution of Two Million Five Hundred Forty Three Thousand Five Hundred Thirty (\$2,543,530.00) Dollars to Foundation Health Corporation, which payment, upon information and belief, required approval from the Commissioner.

22.

The Commissioner did not approve the transaction.

23.

Upon information and belief, as a result of this transaction, Foundation Health, A Louisiana Health Plan, Inc./AmCare Health Plans of Louisiana did not maintain the minimum capital and surplus required by Louisiana law and did not meet the minimum capital and surplus requirement of Four Million (\$4,000,000.00) Dollars as per the ruling of the Commissioner on April 30, 1999.

REGULATORY ACTION

24.

The Commissioner has had to take regulatory action as to AmCare-LA.

25.

Upon information and belief, AmCare-LA may have failed to maintain the minimum capital and surplus required by Louisiana law and the Commissioner's ruling of April 30, 1999 since 1999.

26.

AmCare-LA is insolvent, financially troubled, impaired, and has obligations and claims exceeding the minimum financial requirements set by statute.

27.

On September 23, 2002, an order of rehabilitation was entered in suit number 499-737,

Division D, which order stayed all proceedings as to AmCare-LA and vested exclusive jurisdiction over all matters involving AmCare-LA in this Court.

28.

On November 12, 2002, a permanent order of liquidation was entered in suit number 499-737, Division D.

DAMAGES AND EQUITABLE RELIEF SOUGHT

29.

The defendants are liable for an amount sufficient to ensure that AmCare-LA meets the minimum amounts of paid capital and surplus required for an HMO under Louisiana law and for all amounts due for the rehabilitation and liquidation of AmCare-LA pursuant to Title 22 of the Louisiana Revised Statutes and for such other acts as maybe proved at trial or any hearing of this matter

30.

The Commissioner is entitled to recover all amounts due under the Guarantee, all costs associated and resulting from regulatory action, including, but not limited to, all unpaid amounts due to AmCare-LA members, subscribers, enrollees, policyholders, and all administrative expenses of the rehabilitation and liquidation of AmCare-LA, and such other damages, attorneys fees, and all costs of these proceedings, and for all other equitable relief, all as will be more fully shown at trial.

31.

The Commissioner is entitled to specific performance of the Guarantee executed by Foundation Health Corporation on December 9, 1996.

32.

Amicable demand has been made but to no avail.

WHEREFORE, J. Robert Wooley, Commissioner of Louisiana in his capacity as Liquidator of AmCare Health Plans of Louisiana, Inc., through his duly authorized Receiver, Marlon Harrison, prays that defendants be cited and served with a copy of the petition and be required to answer within the delays allowed by law and that after all legal delays and due proceedings, there be judgment in favor of plaintiff and against

defendants, jointly, severally, and *in solido*, in an amount reasonable is the premises, together with legal interest from the date of judicial demand until paid in full, including reasonable attorneys' fees, all costs of these proceedings, for specific performance and any and all other equitable relief as may be appropriate.

CERTIFIED TRUE COPY

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DEPUTY CLERK OF COURT

Buser & Associates, APLC

BY:

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Attorneys for J. Robert Wooley,
Commissioner of Insurance
for the State of Louisiana as Liquidator of
AmCare Health Plans of Louisiana, and
his Receiver, Marlon V. Harrison

WESTERN JUDICIAL DISTRICT
BATON ROUGE PARISH, LA.
FILED

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DOUG WELBORN

CLUB OF COURT E.B.R. PARISH

PLEASE ISSUE CITATION AND SERVE:

**Foundation Health Corporation or its successor
through the Louisiana Commissioner of Insurance
and**

through the Louisiana Secretary of State
Walter Fox McKeithen
3851 Essen Lane
State Archive Building
Baton Rouge, LA 70809

By the Louisiana Long Arm Statute to:
3400 Data Drive
Rancho Cordova, CA 95670
and

By the Louisiana Long Arm Statute to:
the agent for service of process
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Foundation Health Services, Inc. or its successor
through the Louisiana Commissioner of Insurance
and

through the Louisiana Secretary of State
Walter Fox McKeithen
3851 Essen Lane
State Archive Building
Baton Rouge, LA 70809
and

CIVIL

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| <input checked="" type="checkbox"/> 01-DAMAGES | <input type="checkbox"/> 11-COMM. PROP. PARTITIONS |
| <input checked="" type="checkbox"/> 02-CONTRACT | <input type="checkbox"/> 12-PUBLIC SERV. COMM. |
| <input checked="" type="checkbox"/> 03-PRISONER SUIT | <input type="checkbox"/> 13-OTHER PARTITIONS |
| <input checked="" type="checkbox"/> 04-EXECUTORY PROCESS | <input type="checkbox"/> 14-OTHER |
| <input checked="" type="checkbox"/> 05-SUIT ON NOTES | <input type="checkbox"/> 15-O. E. Q. |
| <input checked="" type="checkbox"/> 06-EVICTION | <input type="checkbox"/> 16- |
| <input checked="" type="checkbox"/> 07-WORKMENS COMPENSATION | <input type="checkbox"/> 17- |
| <input checked="" type="checkbox"/> 08-JUDICIAL REVIEW | <input type="checkbox"/> 18- |
| <input checked="" type="checkbox"/> 09-PROPERTY RIGHTS | <input type="checkbox"/> 19- |
| <input checked="" type="checkbox"/> 10-INJUNCTION MANDAMUS | <input type="checkbox"/> 20- |

By the Louisiana Long Arm Statute to:
3400 Data Drive
Rancho Cordova, CA 95670
and

By the Louisiana Long Arm Statute to:
21650 Oxnard Street
Woodland Hills, CA 91367
and

By the Louisiana Long Arm Statute to:
225 North Main Street
Pueblo, CO 81003
and

By the Louisiana Long Arm Statute to:
the agent for service of process
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Health Net, Inc.
through the Louisiana Commissioner of Insurance
and

through the Louisiana Secretary of State
Walter Fox McKeithen
3851 Essen Lane
State Archive Building
Baton Rouge, LA 70809
and

By the Louisiana Long Arm Statute to:
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